

Course Outline

COURSE: LAWS 4307 B - Medical Criminal Law Issues
TERM: Winter 2008-09
PREREQUISITES: LAWS 2004 and fourth-year Honours standing
CLASS: Day & Time: Tuesday - 18:05-20:55
Room: 311 SA (Southam Hall)
INSTRUCTOR: Michael Davies
(Contract)
CONTACT: Office: D476 LA (Loeb) - Contract Instructors' Office
Office Hrs: Immediately before or after class or by appointment
Telephone: 613-234-1110
Email: mdavlaw@yahoo.ca

"Students with documented disabilities requiring academic accommodations in this course must register with the Paul Menton Centre for Students with Disabilities (PMC) for a formal evaluation of disability-related needs. Documented disabilities include physical, mental, and learning disabilities, mental disorders, hearing or vision disabilities, epilepsy, drug and alcohol dependencies, environmental sensitivities, as well as other conditions. Registered PMC students are required to contact the PMC at 613-520-6608, early each term to ensure that your Instructor receives your Letter of Accommodation no later than two weeks before the first assignment is due or the first in-class test/midterm requiring accommodations. If you require accommodations for your formally scheduled exam(s) in this course, please submit your request for accommodations to PMC by March 6, 2009 for April exams." Also available at http://www.carleton.ca/pmc/faculty/acom_statement.html . For Religious and Pregnancy accommodations, please contact Equity Services, 613-520-2600 x. 5622 or their website: www.carleton.ca/equity

COURSE OBJECTIVE AND CONTENT

This course is an opportunity for students to think about and discuss a variety of areas where medicine and the criminal law intersect.

The course is divided into two parts. During the first part we will examine the interplay between psychiatry and the criminal law. Classes will be in the seminar format and the discussion will be lead by the instructor. Students will be expected to read the assigned material and participate in the class discussion.

The second part of the course will consist of student lead seminars. Students, in groups of two or three, will make a presentation on a topic assigned by the instructor or selected in consultation with the instructor. Students will then prepare individual research papers on the topic of their presentation.

The goal of each class will be to examine critically the principles, policies and pragmatics underlying those areas where medicine and criminal law intersect.

REQUIRED READING

There is no course text. Students are expected to obtain the cases set out above from Quicklaw or other sources.

COURSE STRUCTURE

Part A: The first four or five classes will involve an overview of the intersection of criminal law and psychiatry. Students will be given an overview of the major mental disorders and an overview of the Criminal Code provisions that deal with mental disorder. We will examine the interplay between the Criminal Code provisions and provincial mental health legislation. We will then examine specific issues that commonly arise in criminal cases, including fitness to stand trial, the not criminally responsible verdict as well as the role of the Ontario Review Board in supervising those found not criminally responsible.

Part B: The remaining classes will involve student lead seminars on topical medico-legal issues. These student lead seminars will likely include presentations drawn from the following areas: euthanasia/doctor assisted suicide; medicinal use of marijuana and other narcotics; medical issues in sexual assault trials; treatment as an alternative to punishment; pregnancy, reproductive technology and the criminal law; medical issues in criminal investigations; offences involving H.I.V. and the defences of intoxication and automatism. Students may also suggest other topics.

EVALUATION

Marks will be awarded as follows:

25 MARKS: MID-TERM PAPER (5 PAGES) ON PSYCHIATRY AND CRIMINAL LAW

25 MARKS: PRESENTATION

40 MARKS: FINAL PAPER (12 PAGES) ON PRESENTATION TOPIC

10 MARKS: CLASS PARTICIPATION

COMMUNICATION WITH INSTRUCTOR

You may call me at (613) 234-1110, e-mail me at mdavlaw@yahoo.ca, or see me by appointment. Otherwise I am happy to stay after each class for anyone who wishes to talk to me.

SCHEDULE:**Part A: Criminal Law and Psychiatry****Week 1: Introduction**

Introduction to the course

Week 2: What happens after a person with a mental disorder is arrested?

We will do the following:

- briefly review the various parts of the Criminal Code that deal with mental disorder;
- examine the options available to police officers when they arrest individuals apparently suffering from a mental disorder;
- review the bail provisions of the Criminal Code;
- examine the power of criminal courts to order psychiatric assessments
- examine diversion options; and
- compare psychiatric and legal definitions of mental disorder.

Readings: R v. Rabey, [1977] OJ 2356, Part XX.1 of the Criminal Code

Week 3: Fitness to stand trial

We will examine the following:

- Criminal Code provisions dealing with fitness
- Tests for fitness as developed by the courts
- Unfit to stand trial for reasons other than mental disorder
- Unfit to stand trial in non-criminal cases

*Readings: Taylor, [1992] O.J. 2394, Steele, [1991] J.Q. 240
Roy, [1994] N.S.J. 82, Fast, [2001] F.C.J. 1730*

Week 4: Not Criminally Responsible on Account of a Mental Disorder (The Insanity Defence)

We will examine this defence to a criminal charge, paying particular attention to the following:

- Section 16 of the Criminal Code
- Who bears the onus of proof
- Can the prosecution raise this Adefence@
- What is the meaning of Aappreciates@ in s.16
- What is the meaning of Awrong@ in s.16
- Constitutionality of s.16

Readings: Chaulk, [1990] S.C.J. 139, s.16 of the Criminal Code

Week 5: The Role of the Ontario Review Board

We will examine what happens to individuals who are found not criminally responsible on account of a mental disorder. The class will be introduced to the Ontario Review Board and the role it plays in overseeing NCR or unfit accused. We will examine the dispositions available to it and look at the concept of "significant threat to public safety."

Readings: Winko, [1999] S.C.J. 31, s.672.54 of the Criminal Code

Part B: Medico-legal topics in Criminal Law**Week 6: Medical Defences to Criminal Charges****Psychiatry & Criminal Law Paper Due**

- Topic 1: The Defence of Non-Insane Automatism
Read: *R. v. Stone (1999)*, 134 C.C.C. (3d) 353 (S.C.C.)
- Topic 2: The Defence of Intoxication
Read: *R. v. Daviault (1994)*, 93 C.C.C. (3d) 21 (S.C.C.)
S.33.1 of the Criminal Code
- Topic 3: Self-defence and the Battered Wife Syndrome
Read: *R. v. Lavallee (1990)*, 55 C.C.C. (3d) 97 (S.C.C.)
S.34 of the Criminal Code

Week 7: What to do with those who commit criminal offences?

- Topic 1: Treatment versus Punishment, a theoretical examination
Read: *C.S. Lewis, The Humanitarian Theory of Punishment*
S.718 to 718.2 of the Criminal Code
- Topic 2: Dangerous Offenders and Long Term Offenders
Read: *Part XXIV of the Criminal Code*
R. v. Johnson (2003), 177 C.C.C. (3d) 97 (S.C.C.)

Week 8: Medical Issues in Criminal Investigations

- Topic 1: The seizure of bodily samples from suspects in police custody
Read: *R. v. Stillman (1997)*, 113 C.C.C. (3d) 321 (S.C.C.)
- Topic 2: The police in the E.R.: the seizure of suspects= bodily samples in the possession of hospitals
Read: *Pohoretsky v. The Queen (1987)*, 33 C.C.C. (3d) 398 (S.C.C.)
R. v. Dymont (1989) 45 C.C.C. (3d) 244 (S.C.C.)
R. v. Dersch (1994) 85 C.C.C. (3d) 1 (S.C.C.)
R. v. Spidell (1996) 107 C.C.C. (3d) 348 (N.S.C.A.)
- Topic 3: Coroner=s Inquests
Read: *The Roles of Coroner and Counsel in Coroner's Court (1987-88) Criminal Law Quarterly*, v.130, p.190, Franklin Moskoff & James Young

Week 9: Sex and Criminal Law

- Topic 1: Pregnancy, reproductive technology and the criminal law
Read: *Patrick Healy, Statutory Prohibition and the Regulation of New Reproductive Technologies under Federal Law in Canada (1995)* 40 McGill L.J. 905.
- Topic 2: Status of the unborn child in criminal law
Read: s. 238 CCC & s. 223(1)
R. v. Prince (1989) 44 C.C.C. (3d) 510 (Man. C.A.)
R. v. Drummond [1996] O.J. No 4597
- Topic 3: The newborn child and the criminal law: infanticide
Read: s. 233, s. 237, s. 243, s. 215, s. 218 Criminal Code

Week 10: More Sex

- Topic 1: Judicial intervention in pregnancy
Read: *Judicial Intervention in Pregnancy*, (1995) 40 *McGill Law Journal*, p.947-991, Sheilah Martin & Murray Coleman
- Topic 2: H.I.V. and the criminal law
Read: *R. v. Cuerrier* (1998) 127 C.C.C. (3d) 1 (S.C.C.)
- Topic 3: Access to therapeutic records of complainants in sexual assault trials
Read: s. 278.1-278.91 C.C.C.
R. v. Mills (1993) 139 C.C.C. (3d) 321 (S.C.C.)

Week 11: The Right to Self-harm

- Topic 1: Euthanasia/Doctor assisted suicide
Read: *Medically Assisted Death: Nancy B. v. Hotel-Dieu de Quebec*, Bernard M. Dickens
Rodriguez v. B.C. (1993) S.C.J. No. 94.
- Topic 2: Drugs and the criminal law, including the medical use of marijuana
Read: *Do your own internet search for arguments for and against the legalization of marijuana and other drugs*

Week 12: Final Class

Final Paper Due